IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1979

Supreme Court, U.S.
FILED
MAR 20 1980
MICHAEL RODAK, JR., CLERK

No. 79-1041

State of California,

Petitioner

vs.

Robert Stanley Austin,

Respondent

Response to Petition for
Writ of Certiorari
To the Appellate Department
For the County of Los Angeles,
California

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By Steven M. Shaw

Attorney for Respondent

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Attorney Steven M. Shaw, on behalf of Robert Stanley Austin, prays that the Writ of Certiorari prayed for by petitioners herein be denied.

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JURISDICTION

The judgment of the Appellate Department of the Superior Court, Los Angeles County, California was made and entered October 22, 1979, a correct copy of which is appended to the petition herein. Petitioner's request for certification of said decision to the California Court of Appeal was made and denied on November 8, 1979. A correct copy thereof is appended to the petition herein. Petitioner's have invoked the jurisdiction of this Court under 28 U.S.C. 1257 (3).

On February 19, 1980, the Clerk of this Court requested that a response to said petition be filed.

REASONS TO DENY THE WRIT

The right to counsel is recognized as a fundamental right embraced by the Sixth Amendment. Gideon v. Wainright,372 U.S. 335 (1963). It is guaranteed in all criminal proceedings in which any incarceration is imposed. Argersinger v. Hamlin, 407 U.S. 25 (1972). In addition to counsel's presence at trial, a defendant had a right to the aid of counsel at every "critical stage" of the prosecution. Coleman v. Alabama, 399 U.S.1 (1970).

In Hamilton v. Alabama,368 U.S. 2 (1961), this court held that since under Alabama law, certain defenses must be plead at arraignment or thereafter be lost, this constituted a critical stage of the criminal proceedings. That California considers the arraignment to be a critical stage of the proceedings is manifest in the enactment of Penal Code, section 987, which states:

"(a) In a noncapital case, if the defendant appears for arraignment without counsel he shall be informed by the court that it is his right to have counsel before being arraigned..."

Furthermore, in the case of In re Johnson, 65 Cal. 2d 393 (1965), the California Supreme Court stated, "The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances

surrounding that case, including the background experience, and conduct of the accused.' (Citations ommitted.) Manifestly that determination must be made before any plea- guilty or otherwise - is accepted by the trial court, or the right to counsel loses most of its meaning and effectiveness. (Emphasis supplied.) The making of this determination in a timely fashion is therefore the 'serious and weighty responsibility' of the trial judge. (Citations omitted.)"

In Faretta v. California, 422 U.S. 806, 835 (1975), this Court stated that a part of the knowing and intelligent waiver of the right to counsel is the advisement by the court of the dangers and disadvantages of self-representation.

That California has long required that the court determine whether a waiver of the right to counsel has been knowingly and intelligently made, prior to the entry of any plea, (In re Johnson,supra; In re Birch,10 Cal. 3d 314.) requires, a fortiori, that the "dangers and disadvantages" advisement of Faretta, supra, be given at the arraignment stage of the proceedings. It was in concurrence with this view, the Court of Appeal of California in the case of People v. Torres, 96 Cal.App 3d 14 (1979) stated, at page 20,

"If, therefore, the record on appeal of the case at bar compelled the conclusion that Torres was not advised of the dangers

...

of self-representation, reversal of the judgment would be required."

It is respectfully submitted that in reaching the decision in that case, the Court of Appeal did not erroneously interpret the substance of the Faretta Sixth Amendment right and function of the "dangers and disadvantages" advisement as contended by petitioners herein, but rather, applied the Faretta "dangers and disadvantages" advisement requirement to the Torres case in light of controlling California case law.

The failure of the Court below to advise Respondent of the dangers and disadvantages of self-representation, compelled the Appellate Department of the Superior Court of Los Angeles County, California to reverse judgment against Respondent, herein in accordance with People v. Torres, supra, because of the identical nature of the issues presented therein.

CONCLUSION

For the foregoing reasons certiorari should be denied herein.

DATED: March 17, 1980

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